UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,	:	
- against -	:	12-CR-876 (VSB)
PAUL CEGLIA,	:	ORDER
Defendant.	:	

VERNON S. BRODERICK, United States District Judge:

By Order dated June 1, 2017, I noted that I had held a telephone conference with Paul Argentieri, former counsel for Defendant Paul Ceglia in certain civil actions, after receiving a letter and exhibits from Mr. Argentieri (the "June 1 Order"). (Doc. 186.) Those documents were filed on the docket that same day, (Doc. 185), and the parties in this criminal case were instructed that to the extent they wished to submit papers in connection with Mr. Argentieri's submission, they should do so on or before June 9, 2017, (Doc. 186).

On June 10, 2017, Defendant submitted a motion for an evidentiary hearing and for leave to file dispositive motions. (Doc. 187.) Defendant re-filed his motion, now titled a motion to amend, with a decision from the New York State Appellate Division attached. (Doc. 188.) In sum, Defendant's motion: (1) joins in Mr. Argentieri's submission and requests that I order an evidentiary hearing to determine the propriety of Mark Zuckerburg's status as a crime victim under the Crime Victims' Rights Act, and examine any and all fraud intended to induce or cause the commencement of this criminal action; and (2) points to a 2015 decision by the New York State Appellate Division dismissing a civil action brought for malicious prosecution and attorney deceit against Defendant Ceglia's former attorneys in certain civil actions, and asks that I grant

defense counsel in this case leave to file dispositive motions based on that decision. (Doc. 188.) Defendant's first request is premised on the allegations, raised by Mr. Argentieri, that there has been fraud on the Court by Mr. Zuckerberg and his attorneys.

Recently, to support his initial application, Mr. Argentieri submitted a supplemental letter, attaching an affidavit along with exhibits,[1] which I file concurrently with this Order. (Docs. 192, 193.) The letter requests that I order the production and sequestration of 28 computer devices and e-mails to prevent spoliation of that evidence. (Doc. 192.) The letter further states that the Government's decision not to comment on Mr. Argentieri's initial application is "an admission that the fraud on the court is true." (*Id.*)

To begin with, Mr. Argentieri's submissions, (Docs. 185, 192, 193), are improper because Mr. Argentieri is not a party or counsel to any party in connection with this criminal action, and he has failed to establish that he has standing to file submissions in this case. In addition, the June 1 Order did not require the Government to submit any response, nor do I construe their decision not to submit a response as a concession that there has been fraud on the Court.

In any event, the defense previously raised the issue of the 28 devices. On February 20, 2015, I signed Rule 17(c) subpoenas directed to Facebook and Mark Zuckerberg on behalf of Defendant Ceglia.[2] (Docs. 137, 138.) By letter dated April 8, 2015, defense counsel raised various concerns about the document production made by Facebook and Zuckerberg, including that certain electronic information had not been produced from the 28 devices among other locations. (Doc. 171.) I held a hearing on May 4, 2015 to discuss the subpoenas as well as the

[1] The affidavit submitted was from Michael T. McKibben, a computer technology expert who works for Leader Technologies, Inc., a company that previously filed a case against Facebook.

[2] Defendant Ceglia has been a fugitive since on or about March 10, 2015. Despite his status as a fugitive, I directed Facebook and Zuckerberg to produce documents responsive to the February 20, 2015 subpoena. (Docs. 164, 169.)

deficiencies alleged by the defense. (Dkt. Entry May 4, 2015.) During that hearing, counsel for Facebook and Zuckerberg stated that all locations had been searched. (5/4 Tr. 6:7-10 ("We've ensured and can represent to the Court that we diligently searched all of the locations and produced all responsive documents in response to this subpoena."), 6:14-17 ("Everything has been searched, your Honor. In our diligent search for data and responsive information and carefully, thoroughly reviewed and we produced what was responsive.").)[3] When defense counsel indicated that he did not believe that all locations for electronic information had been searched, I stated to defense counsel that "you may not believe that [everything was searched], but unless you can point to something concrete, in other words, something that shows that somehow something has not been done, I have no reason to doubt Mr. Snyder and Mr. Southwell that they have undertaken their obligation to respond to the subpoena on behalf of their client and that they have searched the devices that they are aware of." (*Id.* at 18:15-21.)

Given that Mr. Argentieri is not a party or counsel to a party in this criminal case, no further filings will be accepted unless one of the parties chooses to file an affidavit or declaration from Mr. Argentieri in accordance with the Federal Rules of Evidence in support of a subsequent application in this criminal case. My decision also does not preclude defense counsel from communicating with Mr. Argentieri as part of their representation of Mr. Ceglia.

However, because the defense joined in Mr. Argentieri's application, I will further address the substance of the requests. Mr. Argentieri's initial application, which was joined in by the defense, appears to request that I alter Mr. Zuckerberg's status as a crime victim. (*See* Doc. 185.) The Crime Victims' Rights Act accords victims of an alleged crime certain basic rights, and provides the process through which a motion asserting a victim's rights may be made.

[3] "5/4 Tr." refers to the transcript of the May 4, 2015 hearing held in this matter. (Doc. 176.)

18 U.S.C. §§ 3771(a), (d)(3). The Government is tasked with making "their best efforts to see that crime victims are notified of, and accorded, the rights described in subsection (a)." *Id.* § 3771(c)(1). The statute further states that "[a] person accused of the crime may not obtain any form of relief under this chapter." *Id.* § 3771(d)(1).

Upon review of the submissions, the requested relief is denied—not only because I would exercise my discretion and apply the fugitive disentitlement doctrine to this application, *see, e.g.*, *United States v. Hayes*, 118 F. Supp. 3d 620, 624 (S.D.N.Y. 2015) (applying fugitive disentitlement doctrine to deny motion to dismiss)—but also because Defendant has not provided me with any legal basis to grant the relief requested under the Crime Victims' Rights Act, nor has Defendant provided me with any legitimate reason why a 2015 New York appellate decision dismissing civil claims brought only against Defendant's former civil attorneys has or should have any impact on this criminal matter. Therefore, I deny Defendant's request for an evidentiary hearing.

In connection with his second argument—under the heading "***RES JUDICATA***"—Defendant references the *Noerr-Pennington* doctrine, which shields private persons from liability for their litigation activities unless the litigation was a sham. (Doc. 188 at 3.) Specifically, Defendant asserts that "[t]o have indicted him in the midst of his civil action for exercising his First Amendment right to petition was an egregious constitutional violation which should be rectified sooner rather than later." (*Id.* at 4.) Defendant previously raised the *Noerr-Pennington* doctrine in connection with two prior motions to dismiss, in which he also argued that the doctrine requires dismissal of this criminal action. (*See* Docs. 35, 111.) These motions were denied by Judge Carter, (Doc. 42), and by me after the case was transferred to my docket, (Doc. 130). In denying Defendant's motion to dismiss, I held that "[a]ssuming *arguendo* that a

criminal defendant can assert *Noerr-Pennington* immunity, Ceglia is not entitled to dismissal of the Indictment because the conduct alleged in the Indictment is not protected by the First Amendment as a matter of law." (Doc. 130 at 8.) I also held that Defendant's "as-applied First Amendment challenge to the Indictment can only be determined after a trial on the merits." (*Id.* at 15.) I see no reason to alter my holding. Therefore, resolution of this matter will need to await trial after Defendant's capture or voluntary return to this District.

SO ORDERED.

Dated: July 5, 2017
New York, New York

Vernon S. Broderick
United States District Judge